

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s): Falla et al.
Serial No.: 10/611,682
For: METHODS OF MAKING COTTON BLEND GLUE
BRASSIERES
Filed: July 1, 2003
Examiner: Gloria Hale
Art Unit: 3765
Confirmation No.: 5335
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Attorney Docket No.: PLO83USQ

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF FILED UNDER 35 U.S.C. §134

Dear Sir:

Further to the Notice of Appeal filed on October 31, 2005, the period for response having been extended two months up to and including January 31, 2006, the Appeal Brief filed herewith under 35 U.S.C. §134 and 37 C.F.R. §41.37 is believed to comply with the requirements set forth in 37 C.F.R. §41.37(c).

(1) Real Party in Interest

The real party in interest is Sara Lee Corporation. Ownership by Sara Lee Corporation is established by assignment document recorded for this application on January 15, 2004 on Reel 014896, Frame 0207.

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(2) Related Appeals and Interferences

The undersigned attorney is not aware of any related patent applications or patents involved in any appeal or interference proceeding.

(3) Status of the Claims

Claims 1 through 23 are pending in this application and are the subject of this Appeal. Claims 1, 4 through 7, 9, 14, 16, and 17 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,154,659 to Gluckin (Gluckin). Claims 8, 15, and 19 through 23 were rejected under 35 U.S.C. §103(a) over Gluckin in view of U.S. Patent No. 2,915,067 to Bracht (Bracht). Claims 2 and 3 were rejected under 35 U.S.C. §103(a) over Gluckin. Claims 10 and 11 were rejected under 35 U.S.C. §103(a) over Gluckin in view of U.S. Patent No. 5,820,443 to Burr (Burr).

(4) Status of Amendments

An Amendment after Final was filed on September 29, 2005. The Amendment after Final amended independent claims 1, 14, and 19. The Advisory Action dated October 14, 2005 entered the Amendment after Final for purposes of Appeal.

(5) Summary of Claimed Subject Matter

The claimed invention relates to relates methods of making undergarments made of cotton blend layers that are glued to one another so that the garments include a finished edge that does not require separate binding or narrow edge finishing.

The user's comfort in wearing undergarments is improved when the garment is made of a material that is soft and supple. The user's comfort is also improved when the garment does not have seams or elastic bands that may "dig in" and constrict the blood flow in the torso area of the wearer. See paragraphs [0003] to [0005].

The claimed invention provides methods of making undergarments by gluing cotton blend layers to one another in such a manner as to prevent "lock up" the fibers, allowing the resultant laminate to stretch. Thus, the claimed methods provide garments having a finished edge that does not require the addition of seams of elastic bands.

In order to provide the desired finished edge, the claimed invention forms a cotton fabric "sub-assembly" or "laminate" that has a periphery that is larger than an entire outer periphery of the undergarment. In this way, the "sub-assembly" or "laminate" can be trimmed or cut at the entire outer periphery to form the finished edge.

(6) Grounds of Rejection to be Reviewed on Appeal

The issue presented for review is the propriety of the final rejection of claims 1 through 23 under 35 U.S.C. §§102 and 103 over Gluckin alone or in combination with Bracht or Burr.

(7) Arguments

Claims 1 through 23 stand or fall together.

Claims 1, 4 through 7, 9, 14, 16, and 17 were rejected under 35 U.S.C. §102(b) over Gluckin. Claims 8, 15, and 19 through 23 were rejected under 35 U.S.C. §103(a) over Gluckin in view of Bracht. Claims 2 and 3 were rejected under 35 U.S.C. §103(a) over Gluckin. Claims 10 and 11 were rejected under 35 U.S.C. §103(a) over Gluckin in view of Burr.

In sum, independent claims 1 and 14 were rejected under 35 U.S.C. §102(b) over Gluckin, while independent claim 19 was rejected under 35 U.S.C. §103(a) over Gluckin in view of Bracht.

The Final Office Action, as well as the subsequent Advisory Action, improperly rejected claims 1 through 23. Appellant respectfully submits that Gluckin does not disclose or suggest laminates that are larger than the entire garment periphery.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, “[t]he identical invention must be shown in as complete detail as is contained in the * * * claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Independent claims 1, 14, and 19 recite that the “subassembly” or “stretchable laminate” has “a periphery that is larger than an entire outer periphery of the undergarment”.

Gluckin discloses a brassiere 60 having right and left side panels 70, 72 that are sewn together by a center seam 74 as seen in Figure 2. See col. 2, line 64 through col. 3, line 8. Thus, Gluckin merely discloses a three layer fused laminate 100 that is larger than the right left side panel 70 or the left side panel 72, where these panels are joined by a center seam 74.

Clearly, the laminate 100 of Gluckin that is only larger than the left or right side panel does not disclose or suggest the “sub-assembly” or “stretchable laminate” that has a periphery larger than the entire outer periphery of the undergarment as required by claims 1, 14, and 19.

Bracht is asserted by the Office Action as disclosing a fusible material formed of polyethylene. However, Bracht does not disclose or suggest a "sub-assembly" or "stretchable laminate" that has a periphery larger than the entire outer periphery of the undergarment as required by claims 1, 14, and 19.

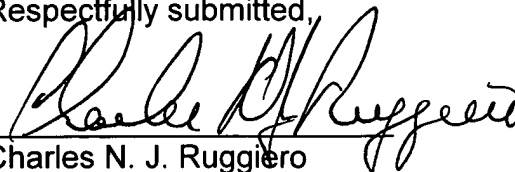
Burr is asserted by the Office Action as disclosing a reinforcement fabric. However, Burr also does not disclose or suggest a "sub-assembly" or "stretchable laminate" that has a periphery larger than the entire outer periphery of the undergarment as required by claims 1, 14, and 19.

In view of the above, Appellants respectfully that claims 1, 14, and 19, as well as claims 2 through 13, 15 through 18, and 20 through 23 that depend therefrom, are not disclosed or suggested by Gluckin alone or in combination with Bracht and/or Burr.

Appellants therefore respectfully request that the Board of Appeals reverse the final rejection of claims 1 through 18.

In summary, Appellants respectfully request that the Board of Appeals reverse the final rejections of claims 1 through 23, thereby enabling all of the pending claims to be allowed.

Respectfully submitted,



Charles N. J. Ruggiero

Reg. No. 28,468

Attorney for Appellant(s)

Ohlandt, Greeley, Ruggiero & Perle, L.L.P.

One Landmark Square, 10th floor

Stamford, CT 06901-2682

Tel: (203) 327-4500

Fax: (203) 327-6401

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(8) Claims Appendix

Claims 1 through 23, herein on appeal, are set forth below.

1. (Previously presented) A method of forming an undergarment comprising:

inserting an adhesive layer between a first fabric layer and a second fabric layer to form a fabric sub-assembly, said sub-assembly having a periphery that is larger than an entire outer periphery of the undergarment;

causing said adhesive layer to form a laminate from said sub-assembly; and

removing a trim from said laminate at said entire outer periphery to form a finished edge of the undergarment, wherein said first and second fabric layers include a blend of cotton-based material.

2. (Original) The method as in claim 1, wherein said blend comprises about 44% to about 50% of said cotton-based material, about 44% to about 50% of a polyester material, and about 3% to about 9% of a spandex material.

3. (Original) The method as in claim 2, wherein said blend comprises about 47% of said cotton-based material, about 47% of said polyester material, and about 6% of said spandex material.

4. (Original) The method as in claim 1, wherein said finished edge resists unraveling.

5. (Original) The method as in claim 1, wherein said finished edge has a shape selected from the group consisting of a straight edge, a scalloped edge, and any combination of the foregoing.

6. (Original) The method as in claim 1, wherein said adhesive layer only bonds said first and second fabric layers together in a selected region so that a non-bonded region is formed.

7. (Original) The method as in claim 6, wherein said non-bonded region is a breast cup region.

8. (Original) The method as in claim 1, wherein said adhesive layer is a layer of thermally actuated polyethylene and ethylene vinyl acetate copolymer.

9. (Previously presented) The method as in claim 1, wherein said adhesive layer allows said first fabric layer to bond to said second fabric layer so that said laminate is a stretchable laminate.

10. (Original) The method as in claim 1, further comprising inserting a fabric member between said first fabric layer and said adhesive layer.

11. (Original) The method as in claim 10, wherein said fabric member is a gore.

12. (Original) The method as in claim 10, wherein said fabric member is an underwire channel.

13. (Original) The method as in claim 12, further comprising inserting an underwire into said underwire channel before or after causing said adhesive layer to form said laminate.

14. (Previously presented) A method of forming an undergarment comprising:

applying an adhesive layer to a first fabric layer, said first fabric layer being a first cotton blend fabric;

overlying said adhesive layer with a second fabric layer, said second fabric layer being a second cotton blend fabric;

causing said adhesive layer to bond said first and second fabric layers together to form a stretchable laminate, said stretchable laminate having a periphery that is larger than an entire outer periphery of the undergarment; and

cutting said stretchable laminate along said entire outer periphery to form a finished edge of the undergarment that resists unraveling.

15. (Original) The method as in claim 14, wherein said adhesive layer is a layer of thermally actuated polyethylene and ethylene vinyl acetate copolymer.

16. (Original) The method as in claim 14, wherein said adhesive layer only bonds said first and second fabric layers together in a selected region so that a non-bonded region is formed.

17. (Original) The method as in claim 16, wherein said non-bonded region is a breast cup region.

18. (Original) The method as in claim 14, further comprising inserting a fabric member between said first fabric layer and said adhesive layer.

19. (Previously presented) A method of forming an undergarment comprising:

forming an adhesive layer having an adhesive free region;

surrounding said adhesive layer with a first fabric layer and a second fabric layer;

causing said adhesive layer to bond said first and second fabric layers together to form a stretchable laminate, said stretchable laminate having a periphery that is larger than an entire outer periphery of the undergarment; and

cutting said stretchable laminate along said entire outer periphery to form a finished edge of the undergarment that resists unraveling, wherein said adhesive layer is a layer of thermally actuated polyethylene and ethylene vinyl acetate copolymer.

20. (Original) The method as in claim 19, wherein said adhesive free region defines a non-bonded region of said first and second fabric layers.

21. (Original) The method as in claim 19, wherein said first and second fabric layers comprise a blend of a cotton material.

22. (Original) The method as in claim 21, wherein said blend comprises about 44% to about 50% of said cotton material, about 44% to about 50% of a polyester material, and about 3% to about 9% of a spandex material.

23. (Original) The method as in claim 19, wherein said finished edge has a shape selected from the group consisting of a straight edge, a scalloped edge, and any combination of the foregoing.

(9) Evidence Appendix

None.

(10) Related Proceedings Appendix

None.